IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10531 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

RK SHAH, RETD ITO

Appearance:

1. Special Civil Application No. 10531 of 1999
MS MAUNA BHATT for MR MANISH R BHATT for Petitioner
MR S TRIPATHY for Respondent

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 20/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The petitioner - Union of India, in this petition under Article 227 of the Constitution of India, has challenged the order dated 16.3.1999 passed by the Central Administrative Tribunal, Ahmedabad Bench, in OA No. 682 of 1997. By the said order, the Tribunal directed the present petitioner to re-examine the case of the present respondent in consultation with the Union Public Service Commission ('UPSC' for short) and in accordance with the directions of the Tribunal dated 3.1.1997 while disposing of the OA No. 266 of 1994 and shall make available to the UPSC all the relevant document such as the service record of the present respondent and also of the cases of similarly situated officers. It was further directed that after ascertaining the views of the UPSC in this regard, the Department shall proceed to dispose of the petition dated 19.7.1993 taking into account all relevant circumstances and shall communicate the decision in this regard to the present respondent by means of a speaking order and the entire exercise was to be completed within four months from the date of receipt of the copy of the order.

2. The respondent who has retired as Income Tax Officer (ITO) was served with a charge sheet dated 17.9.1986 charging him that in collusion with the assessees' representatives, he had during the period from 15.6.1981 to 19.11.1985 completed assessments in certain cases on which he had no jurisdiction, in a dishonest and malafide manner and issued refund orders to persons who in fact were not entitled to any refund and thereby he caused wrongful loss of revenue to the Government. The respondent was thus charged with having violated the provisions of Rule 3(1)(i), 3(1)(ii), and 3(1)(iii) of the CCS (Conduct) Rules. After a detailed inquiry where the Central Vigilance Commission was also involved, the Inquiry Officer held by his report dated 28.9.1991 that the charges were established to the extent summarised as under:

Charge	Finding
(1) The respondent issued refund orders on the basis of bogus TDS certificates resulting revenue loss of Rs.1,23,111/-.	Considering the totality of evidence, the Inquiry Officer held that the respondent has not exercised due discretion and caution.

(2)	The respondent took undue interest in completing the impugned assessments over which he had no jurisdiction.	The Inquiry Officer held that the respondent took undue interest in completing the impugned assessments without his jurisdiction.

It appears that the Office of the Chief Vigilance Commissioner had informed the Central Board of Direct Taxes by his letter dated 16.7.1991 advising acceptance of the Inquiry Officer's report and also imposition of penalty of 10% cut in the pension of the respondent for two years. The Department considered this and forwarded a copy of the Inquiry Officer's report to the respondent and after considering the representation, agreed with the Inquiry Officer regarding the charges against the respondent that they were held to be proved. Since the respondent had retired, the Department took recourse to Rule 9 of CCS (Pension) Rules which makes it obligatory to consult the UPSC before passing the final orders. The Department accordingly took the orders of the Finance Minister for referring the case to the UPSC. The UPSC went into the Inquiry Officer's report and by its letter dated 27.1.1993, recommended withholding of the entire pension on a permanent basis and stated that the gratuity as admissible may be released. The recommendations of the UPSC were considered and its advice was accepted by the Department at the level of the Minister. The Department issued orders dated 26.5.1993, where the President had imposed the penalty of withholding the entire pension on permanent basis in respect of the respondent.

The respondent approached the Central Administrative Tribunal, Ahmedabad Bench by filing OA No.266 of 1994 where he had challenged the order dated 26.5.1993 as illegal and unconstitutional. The Tribunal, by its order dated 3.1.1997 directed the Department to reconsider the quantum of punishment alone by giving the following directions:

> "The Tribunal has come to the conclusion that looking to the overall facts of the case, there is a strong case for the Department to reconsider the quantum of punishment awardable to this applicant in the context of the actual record of the officer himself throughout his career in regard to his integrity. It is to be decided whether the action of the officer

resulted from negligence and lack of care particularly, when the Department itself was keen to see that refund orders etc. are issued in time. The charge of the applicant having issued refund orders outside his jurisdiction has to be seen by the Department in this light especially when the Department has its own internal audit arrangement to pre-audit refund orders above Rs.5000/- by reference to higher authority.

It is seen from the records that the applicant has filed a representation vide letter dated 19.7.1993. Though he had used the words appeal/appellant as against review petition/petitioner, Tribunal directs that the representation of 19.7.1993 by the applicant may be considered as a review petition on the limited issue regarding the quantum of punishment keeping in view the aspects of mens-rea, and the overall record of the officer and action taken against similarly placed officers as such. The review may be completed within a period of four months. The application is disposed of with remarks as above. No order as to costs."

After the above order, the respondent also filed another representation dated 22nd February 1997 drawing the attention to his earlier representation dated 19.7.1993 and requested the Department to reconsider the issue and to do justice. It appears that the Department issued the fresh order dated 30th July 1997 wherein they reiterated the earlier order of withholding the entire pension amount on permanent basis by rejecting the review petition.

As stated above, the above said order was challenged before the Central Administrative Tribunal, Ahmedabad Bench, by way of OA No. 682 of 1997 and the Tribunal, after setting aside the order dated 30th July 1997, directed the present petitioner to re-examine the petition of the present respondent dated 19.7.1997 in consultation with the UPSC and in accordance with the directions of the Tribunal dated 3.1.1997. Hence, this petition.

3. We have heard Ms.Mauna Bhatt appearing for Mr.Manish Bhatt, learned Counsel for the petitioner as well as Mr.Tripathy, learned Counsel appearing for the respondent, at length. We have also perused the judgment rendered by the Central Administrative Tribunal, Ahmedabad Bench and other relevant papers.

4. On the basis of proved misconduct as per the finding recorded by the Inquiry Officer against the respondent, it is clear that the respondent has not exercised due discretion and caution and has taken undue interest in completing the impugned assessments. It is also clear that the Department has suggested only a cut in pension after taking into consideration the proved misconduct and career record of the respondent. It is the UPSC, in the instant case, had gone beyond their reach in recommending much higher punishment of holding back the pension totally. The Central Administrative Tribunal in its earlier order also concluded that looking to the overall facts of the case, there is a strong case for the Department to reconsider the quantum of punishment awardable to the respondent in the context of the actual record of the officer himself throughout his career in regard to his integrity. It was also observed that whether the action of the officer resulted from negligence and lack of care particularly when the Department itself was keen to see that refund orders etc. are issued in time. Unfortunately, the Department could not consider the directions of the Tribunal in proper perspective and has in fact failed to make a reference to the UPSC. Therefore, the Tribunal was required to give fresh direction to the Department to re-examine the case of the respondent. The respondent who is tossed like a shuttle cock is fighting his cause for all these years, i.e. since December 1987 when he retired from active service. The respondent has served the Department for more than 40 years. During his entire career, there was no adverse remarks in his service record. Therefore, in absence of mens-rea and in absence of even allegation of collusion, the punishment of withholding of the entire pension, in our opinion, is grossly disproportionate to the magnitude of the misconduct. Even though Mr.Tripathy, learned Counsel for the respondent wanted to submit on the merits of the case, namely, to prove his innocence, we have not permitted him on the simple ground that this Court is not sitting as a appeal Court over the decision of the authority and therefore, it is not possible for this Court to go into the merits of the case. Therefore, even by accepting the fact that the charges levelled against the petitioner are proved, causing revenue loss to the Department to the extent of Rs.1,25,000/-, by that fact itself, the respondent cannot be made to suffer for all time to come. The Union of India, in this petition, has challenged the directions of the Tribunal directing the Department to reconsider the case of the respondent. We hardly see any justifiable reason in challenging the judgment of the Tribunal

especially when the Tribunal could not have decided the quantum of punishment and therefore, the Tribunal was justified in giving the directions to the Department to re-consider the case of the respondent. Even by rejecting the petition, by upholding the judgment of the Tribunal, we are delaying justice to the respondent as he is aged about 75 years and his pension is withheld since 1987. Under the circumstances, we are tempted to consider the question regarding the quantum of punishment.

5. Learned Counsel for the respondent submits that the disciplinary authority is invested with the discretion to impose appropriate punishment and have in fact imposed punishment after considering the gravity of the misconduct and therefore this Court will not exercise the powers by substituting its own conclusion on penalty and impose some other penalty. She placed reliance in the case of Union of India v. Parma Nanda, reported in AIR 1989 SC 1185. The Supreme Court, after analysis of Sections 14, 15, 16, 27, 28 and 29 of the Administrative Tribunals Act, observed that in the case of proceedings transferred to the Tribunal from a civil court or High Court, the Tribunal has the jurisdiction to exercise all the powers which the civil court could in a suit or the High Court in a writ proceeding could have respectively exercised. In an original proceeding instituted before the Tribunal under S.19, the Tribunal can exercise any of the powers of a civil court, or High Court. The Tribunal thus could exercise only such powers which the Civil Court of the High Court could have exercised by way of judicial review. It is neither less nor more. Because, the Tribunal is just a substitute to the civil court and High Court. The Administrative Tribunal therefore cannot interfere with the penalty imposed on a delinquent employee by the competent authority on ground that the penalty is not commensurate with the delinquency of the employer. The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art.309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully

be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

It has been further observed that, however the cases where the penalty is imposed under cl.(a) of the second proviso to Art.311(2) of the Constitution constitute an exception to the above rule. Where the person, without enquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted on the person. If the penalty impugned is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under cl.(a).

On reading the above observations, it is clear that the Tribunal cannot interfere with the penalty imposed on the delinquent employee on the ground that it is not commensurate with the delinquency of the employer subject to the exception stated therein.

The Supreme Court in the case of B.C.Chaturvedi v. Union of India, reported in AIR 1996 SC 484 has ruled that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

6. In view of the judgment rendered by the Supreme Court in the case of B.C.Chaturvedi (supra), this Court can certainly interfere with the question of punishment imposed on the Government servant by the disciplinary/appellate authority provided the punishment shocks the conscience of the Court. As observed earlier, the respondent in the instant case, though retired 16 years ago, is unable to get his pensionary benefits as

the same is withheld by way of penalty for the proved misconduct. The mens-rea to commit similar misconduct is totally absent as during his entire period of 40 years' of service, admittedly no adverse report is there. Even the proved misconduct at the most amounts to negligence in performance of his duty and the persons who are similarly situated with respect to the same allegations have been differently treated by the Department by awarding different penalty. Considering the fact that the Department has infact suggested to impose a penalty of cutting the pension which is not approved by the UPSC and therefore, the Department is directed to re-consider its own decision and to make a reference, even for this purpose the matter is remanded twice. If the said directions are allowed to operate in that case, also there would be further delay in the matter. Thus, considering the matter as above, we are of the opinion that this is an exceptional and rare case, and therefore, we would like to impose appropriate punishment against the proved misconduct of the respondent. Taking into consideration the facts and circumstances of the case, we hold that the charges levelled against the respondent are proved and we confirm the order on that count passed by the disciplinary as well as the appellate authority. We, however, modify the order of punishment by substituting the order to deduct the amount of Rs.1,25,000/- (Rupees One lac twenty-five thousand only) being the revenue loss caused to the Department from the arrears of the amount of pension to be paid to the respondent. In other words, the Department shall release the arrears of amount of pension of the respondent after deducting Rs.1,25,000/. We however hold that the respondent shall not be entitled to interest on the arrears of pension amount withheld by the Department since 1987 till the date. The loss of interest for sixteen years be treated as penalty imposed by this Court. We, however, direct the petitioner to release the amount of pension of the respondent after computing the same and deducting the amount of Rs.1,25,000/- as stated above, within six weeks from the date of receipt of this order and shall continue to pay regularly monthly pension. It is clarified that if the petitioner does not pay the amount as above within the said period, the respondent shall be entitled to interest at the rate of 6% (six percent) for the delayed payment.

This petition is rejected subject to the directions given above. Rule is discharged. Interim relief stands vacated. There shall be no order as to costs.

(Kshitij R. Vyas, J.)

(Sharad D. Dave, J.)

Sreeram.